

Coal Combustion Residuals AES Puerto Rico

Issue

The Commonwealth permits the disposal of "Agremax," an ash aggregate generated by the AES PR coal-fired power plant in Guayama, in lined landfills; however, disposal, even in lined landfills, is currently banned under municipal law that is the subject of an appeal by AES in federal court. Thus, the Region is concerned about the proper management and disposal of Agremax.

Status

AES Agremax Storage

The Region continues to monitor the impacts of the municipal bans on the onsite management and off-site disposal of ash/Agremax. In March 2017, CEPD met with AES on a storm water matter (please see CWA Order section, below) and AES informed them that AES had shipped 25,000 Tons off-island in October 2016, was planning two similar shipments in March and April 2017, and wanted the shipments to take place regularly thereafter. To determine whether ash/Agremax is being accumulated at the power plant, CEPD plans to drive by the facility and take photos in an effort to compare the size of the ash/Agremax pile to previous photos.

CCR Rule Compliance

In a December 2016 letter to AES, OLEM confirmed that the power plant's Agremax pile is solid waste and is considered an existing landfill subject to all applicable requirements of the CCR Rule, including closure. AES has met a November 2016 regulatory deadline by posting closure plans and other documents to its website, and thus appears to be in compliance with the CCR Rule. The next major deadline required by the CCR rule is the establishment of a groundwater monitoring system by October 2017.

CCR Legislation

The Water Infrastructure Improvements Act for the Nation Act (WIIN) was signed into law in December 2016 and contains a separate subtitle on CCR. It establishes a permitting program and gives EPA enforcement authorities under RCRA 3007 and 3008. States can submit permit programs to EPA which, once approved, will operate *in lieu of* the CCR final rule, and if any state chooses not to submit a permit program, then EPA must, subject to appropriations, implement its own permit program in that state to achieve compliance with the CCR Rule. EPA may use RCRA 3007 and 3008 authorities to enforce the RCRA 4005(a) prohibition on open dumping with respect to CCR units, with limitations applying to units in states with approved CCR permit

programs. DECA is participating in the OLEM CCR workgroup and will remain in coordination with EQB to address compliance and disposal issues as they arise.

CWA Order

AES has complied with a March 2015 CWA Consent Order for storm water permit violations, as confirmed in an August 2016 inspection, and CEPD is contemplating closing out the Order.

Community Concerns

CEPD has suggested to the governor's office that the landfills meet with the community and confer with their technical representative(s) and EQB senior management to open up a dialog to address community concerns about fugitive dust release and other matters.

Background

Agremax/ash Disposal

AES told us in January 2016 that Agremax was being sent for disposal in the lined EC Waste El Coqui landfill in Humacao and was not being shipped to the mainland. In November 2016, protestors blocked the resumption of Agremax/ash shipments to the EC Waste Penuelas Valley Landfill. Citizen's claimed that Agremax/ash dust was being released from the landfill and by trucks transporting Agremax to the landfill. CEPD inspected the El Coqui and Penuelas Valley landfills in May 2016 and confirmed that appropriate operational controls were in place, including fugitive dust controls for transport and disposal. CEPD also inspected the AES Guayama plant in August 2016 and found that the Agremax/ash pile had been substantially reduced.

Legacy Sites

In 2016, CASD, in consultation with ORC, discussed potential authorities, options, and resources for a soil and groundwater investigation at PR "legacy" sites such as the AES North Well Field that are not covered under the CCR Rule, and the results of these discussions were shared with DESA. Conducting the comprehensive study necessary to properly characterize the subsurface transport of contaminants from the land placement of Agremax/ash requires substantial contractor resources. CEPD is still evaluating options.

CCR Litigation

Litigation has occurred and is ongoing in various territorial and federal courts regarding the legality of bans on ash/Agremax disposal, that regulatory status of Agremax, and the validity and applicability of the CCR rule.

ATSDR

ATSDR is considering a request from the public to investigate potential health effects from the alleged release of Agremax at the Penuelas Valley Landfill, and DECA has provided requested documents.